IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1315

MORNINGSIDE RENEWAL COUNCIL, INC., and
RIVERSIDE DEMOCRATS, INC., *Petitioners,*

v.

UNITED STATES ATOMIC ENERGY COMMISSION,
UNITED STATES OF AMERICA, and
TRUSTEES OF COLUMBIA UNIVERSITY IN THE
CITY OF NEW YORK, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

COLUMBIA UNIVERSITY'S BRIEF IN OPPOSITION

We add just a few words to supplement the Government's reasons why, on the merits, certiorari should be denied. (For this purpose it is assumed the petition for certiorari will be treated as though filed in time, despite the fact that this Court's order of January 21, 1974, 94 S.Ct. 909, did not grant leave for later filing.)

This case, already pending an unusual length of time, has been given thorough and fair consideration by the Atomic Energy Commission on a full record which covers safety, environmental and all other relevant factors. On judicial review, the Commission's order then received careful scrutiny from the Second Circuit

—an appellate court particularly experienced on issues with respect to the applicability or non-applicability of the National Environmental Policy Act (NEPA).

The record makes it clear that the Commission and the Second Circuit both decided the case correctly. The Second Circuit, having reviewed the extensive record, expressly concluded that the Commission's findings "are supported by substantial evidence in the record"; that the decision "was clearly not arbitrary and capricious"; and that "in this instance, there was a reviewable environmental record made with the participation of the public so that the finding that no NEPA statement was necessary was made by the Board with full knowledge of all the environmental questions raised by the petitioners" (Pet. App. pp. 8a-9a). Noting that the underlying issue was "safety", the Second Circuit determined that the Commission's inquiry into this area "was detailed and entirely adequate" (Pet. App. p. 9a).

Accordingly, it is evident the Commission's order by now has received all the judicial review that is warranted. The case does not involve matters which are coming before the courts regularly or frequently—or even more often than in this single instance. Indeed, no other research reactor has been the subject of a contested proceeding. Further guidance from this Court is not required to settle the law or to avoid conflicting results. The issues presented on this record have not arisen in any other litigation, past or present. The petitioners' claims of conflict of decisions are wholly wide of the mark—for the reasons, among others, discussed in the Government's Brief in Opposition; the cases referred to by petitioners arose in vastly different contexts, presenting wholly different issues and bearing only the remotest resemblance to what is involved in the present case.

Petitioners (Pet. pp. 12-14) give much prominence to the alarmist testimony they offered, before the Appeal Board, through their witness Dr. Sternglass. Petitioners neglect mentioning, however, that the record is full of evidence which solidly refutes Dr. Sternglass' claims. The Appeal Board, which heard and meticulously considered all this evidence, analyzed Dr. Sternglass' contentions in detail (Pet. App. 117a-130a) and concluded "that Dr. Sternglass' allegations are not substantiated by the facts he has presented in their support" (Pet. App. p. 119a), "that Dr. Sternglass' assertions have no valid scientific foundation" (Pet. App. p. 124a), and "that Dr. Sternglass' statistical methodology and selective sampling techniques are not scientifically credible" (Pet. App. p. 130a). If ever a case showed the wisdom of having a responsible agency board to hear the evidence and sift the wheat from the chaff, this is such a case.

CONCLUSION

For the reasons set forth in the Government's Brief in Opposition and the supplemental reasons added here, the petition for certiorari should be denied.

Respectfully submitted,

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